

**REMARKS**

This responds to office action dated February 19, 2010. No new matter has been added; as a result; claims 5 and 10-14 are pending in the present application.

The Applicants reserve all applicable rights not asserted in or with this response, including, for example, the right to rebut tacit and explicit characterizations of one or more cited references, the right to rebut asserted combinations and motives for combinations, and the right to swear behind one or more cited references. The Applicants make no admissions regarding the status of any art of record as prior art.

**Petition to Withdraw Finality**

The Examiner indicated that the current Office Action has been made final. Applicants submit that the finality of the Action is improper and therefore requests withdrawal of that finality, pursuant to Section 706.07(d) of the Manual of Patent Examining Procedure (MPEP).

In particular, in the previous Action response mailed on November 12, 2009, the Applicants presented case outlining fallacy of the rejection of claims 5, and 10-14 with respect to Kossovsky and Kossovsky provisional. The Examiner, in his “Response to Arguments”, stated that Applicants’ arguments regarding claim 5, and 10-14 with respect to Kossovsky provisional have been fully considered but are not found to be persuasive. The Examiner further specifically referred to “*Terms and Conditions, Appendix, pages 104-105*”, “*Control of Bids/Offers, Appendix, pages 101-102*”, and

"Rules for Closing the Auction, Appendix, page 103" of Kossovsky provisional in support.

However, Applicants respectfully submit that the above mentioned sections of the Kossovsky provisional, which the Examiner referred to, were not made available by the Examiner along with the Non-Final Office Action mailed on May 12, 2009. Moreover, the Kossovsky provisional provided by the Examiner in the current Office Action has additional information, which was not made available in the Office Action mailed on May 12, 2009. For example, *the Appendix, page no. 70 to page no. 111* of the Kossovsky provisional. Further, this has already been discussed with the Examiner in the Examiner interview held in April, 2010.

Accordingly, Applicants have not been given a fair opportunity to argue the patentability of claims 5, and 10-14. For at least this reason, the finality of the current Office Action should be withdrawn and the prosecution should be reopened.

### **35 USC §102 Rejection of the Claims**

Applicant traverses all rejections to the claims.

Claims 5 and 10-14 were rejected under 35 U.S.C 102 (e) as being anticipated by US Patent Application Publication No. 2002/0004775 (hereinafter, "Kossovsky"). A *prima facie* case of anticipation under 35 U.S.C. § 102 requires a showing that each limitation of a claim is found in a single reference, practice or device. (See *In re Donohue*, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985)).

Based on the *petition to withdraw finality*, the Applicants traverse all the rejections. Thus, the Applicants respectfully submit that claims 5, and 10-14 are not anticipated by Kossovsky.

**Conclusion**

Applicant respectfully submits that the claims 5 and 10-14 are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney, Ken Sheets, at (703) 236-2994 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 50-2646.

Respectfully submitted,

KENT J. SIEFFERT et al.

By their Representatives,

Customer No. 70859

Date August 19, 2010

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CERTIFICATE UNDER 37 CFR 1.8(i)(C): The undersigned hereby certifies that this correspondence is being transmitted via the Office electronic filing system in accordance with 37 C.F.R. §1.8(i)(C) on this 19th day of August, 2010.

KENDAL M. SHEETS  
Name

/Kendal M. Sheets/  
Signature